

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 257

HOUSE BILL 2403

AN ACT

REPEALING SECTION 15-1635, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 13, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 15-1635; RELATING TO THE ARIZONA BOARD OF REGENTS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Intent

3 The legislature intends to facilitate technology transfer by the
4 Arizona board of regents and the state universities and that it be carried
5 out according to policies established by the board for the following
6 purposes:

7 1. To transfer university technology to the private sector to enable
8 the public to benefit from its use.

9 2. To obtain an appropriate return on university technology.

10 3. To induce closer ties with the private sector.

11 4. To contribute to economic development.

12 5. To recruit, retain and reward faculty, other researchers and other
13 inventors.

14 6. To provide students with opportunities to participate in the
15 process of using university technology to benefit the public.

16 7. To accomplish other purposes that the board determines to be
17 appropriate.

18 Sec. 2. Repeal

19 Section 15-1635, Arizona Revised Statutes, is repealed.

20 Sec. 3. Title 15, chapter 13, article 2, Arizona Revised Statutes, is
21 amended by adding a new section 15-1635, to read:

22 15-1635. Ownership of business interest in exchange for
23 technology or intellectual property; annual report;
24 definitions

25 A. IN ITS CAPACITY AS A CORPORATE BODY, THE BOARD BY RESOLUTION MAY
26 ACQUIRE AN OWNERSHIP INTEREST, IN THE FORM OF SECURITIES, IN A BUSINESS
27 ENTERPRISE AS ALL OR PART OF THE CONSIDERATION FOR THE LICENSE OR OTHER
28 DISPOSITION OF ANY INTEREST IN TECHNOLOGY OR INTELLECTUAL PROPERTY CREATED
29 OR ACQUIRED, IN WHOLE OR IN PART, OR MANAGED BY THE BOARD. THE BOARD MAY
30 ALSO ENTER INTO RESEARCH AND DEVELOPMENT AGREEMENTS, ROYALTY AGREEMENTS,
31 DEVELOPMENT AGREEMENTS, LICENSING AGREEMENTS, JOINT VENTURE AGREEMENTS AND
32 PROFIT SHARING AGREEMENTS CONCERNING THE RESEARCH, DEVELOPMENT, PRODUCTION,
33 STORING OR MARKETING OF NEW PRODUCTS OR SERVICES DEVELOPED OR TO BE DEVELOPED
34 BASED IN WHOLE OR IN PART ON UNIVERSITY RESEARCH, TECHNOLOGY OR INTELLECTUAL
35 PROPERTY.

36 B. THE BOARD SHALL NOT CONTRIBUTE MONEY OR OTHER PROPERTY TO THE
37 ISSUER OF THE SECURITIES UNDER SUBSECTION A, EXCEPT FOR THE ASSIGNED OR
38 LICENSED TECHNOLOGY OR INTELLECTUAL PROPERTY. A MEMBER OF THE BOARD SHALL
39 NOT RECEIVE ANY DIRECT OR INDIRECT COMPENSATION FOR SERVING AS A MEMBER,
40 DIRECTOR OR TRUSTEE OF ANY SUCH ISSUER OF SECURITIES, OTHER THAN
41 REIMBURSEMENT FOR ACTUAL EXPENSES INCURRED IN PERFORMING THE MEMBER'S
42 DUTIES. THIS STATE, THE BOARD AND INSTITUTIONS UNDER THE BOARD'S
43 JURISDICTION ARE NOT LIABLE FOR ANY DEBT OR OTHER OBLIGATION OF ANY COMPANY,
44 CORPORATION OR INDIVIDUAL DUE TO OWNERSHIP OF SECURITIES PURSUANT TO THIS
45 SECTION, WHETHER IN TORT, CONTRACT OR OTHERWISE.

1 C. THE BOARD MAY ACQUIRE, HOLD, PLEDGE AND DISPOSE OF SECURITIES
2 DESCRIBED IN SUBSECTION A FOR THE BENEFIT OF ONE OR MORE OF THE STATE
3 UNIVERSITIES. SECURITIES THE BOARD ACQUIRES UNDER THIS SECTION SHALL BE
4 TREATED AS ENDOWMENT ASSETS SUBJECT TO TITLE 10, CHAPTER 41.

5 D. THE BOARD MAY DESIGNATE ONE OR MORE TECHNOLOGY DEVELOPMENT
6 COMPANIES TO ACQUIRE, HOLD, PLEDGE AND DISPOSE OF THE SECURITIES ON BEHALF
7 OF THE BOARD OR UNIVERSITIES. THE BOARD MAY ASSIGN OR LICENSE, IN WHOLE OR
8 IN PART, ITS INTEREST IN TECHNOLOGY OR INTELLECTUAL PROPERTY, OR THE BOARD
9 MAY ASSIGN, IN WHOLE OR IN PART, ITS INTEREST IN SECURITIES ACQUIRED PURSUANT
10 TO THIS SECTION, TO ANY TECHNOLOGY DEVELOPMENT COMPANY, IN CONSIDERATION OF
11 THE ASSIGNEE'S OR LICENSEE'S UNDERTAKING TO DEVELOP OR TO CAUSE TO BE
12 DEVELOPED THE TECHNOLOGY OR INTELLECTUAL PROPERTY FOR THE BENEFIT OF THE
13 BOARD OR UNIVERSITY. THE TECHNOLOGY DEVELOPMENT COMPANY MAY HOLD THE
14 TECHNOLOGY, INTELLECTUAL PROPERTY OR SECURITIES DIRECTLY OR THROUGH
15 SUBSIDIARY ENTITIES THAT ARE DIRECTLY OR INDIRECTLY WHOLLY OWNED BY THE
16 TECHNOLOGY DEVELOPMENT COMPANY. ANY TECHNOLOGY DEVELOPMENT COMPANY OR WHOLLY
17 OWNED SUBSIDIARY ENTITY IS NOT CONSIDERED TO BE AN AGENCY OR INSTRUMENTALITY
18 OF THIS STATE.

19 E. AN ISSUER OF SECURITIES ACQUIRED BY THE BOARD PURSUANT TO
20 SUBSECTION A, WHETHER HELD BY THE BOARD OR BY ANOTHER ENTITY PURSUANT TO
21 SUBSECTION D, SHALL PROVIDE THE BOARD WITH ALL INFORMATION THAT A CORPORATION
22 IS REQUIRED TO FURNISH TO SHAREHOLDERS PURSUANT TO TITLE 10, CHAPTER 16,
23 ARTICLE 2. THE BOARD MAY INSPECT THE RECORDS OF THE ISSUER OF SECURITIES AS
24 PROVIDED BY TITLE 10, CHAPTER 16, ARTICLE 1.

25 F. THIS SECTION DOES NOT CAUSE AN ISSUER OF SECURITIES DESCRIBED IN
26 SUBSECTION A OR A TECHNOLOGY DEVELOPMENT COMPANY OR OTHER ENTITY DESCRIBED
27 IN SUBSECTION D TO BE:

- 28 1. CONSIDERED AN AGENCY OR INSTRUMENTALITY OF THIS STATE.
29 2. SUBJECT TO THE PUBLIC RECORDS, PUBLIC MEETINGS OR PUBLIC FINANCE
30 LAWS OF THIS STATE, EXCEPT FOR INFORMATION RECEIVED BY THE BOARD PURSUANT TO
31 SUBSECTION E.

32 G. FOR THE PURPOSES OF CARRYING OUT THIS SECTION, THE BOARD MAY
33 RECEIVE AND ACCEPT AID OR CONTRIBUTIONS OF MONIES FROM ANY SOURCE, INCLUDING
34 GIFTS OR GRANTS FROM PRIVATE SOURCES OR FROM ANY DEPARTMENT OR AGENCY OF THE
35 UNITED STATES OR THIS STATE.

36 H. ON OR BEFORE MARCH 1 OF EACH YEAR, THE BOARD SHALL ISSUE A PUBLIC
37 REPORT OF ITS ACTIVITIES UNDER THIS SECTION DURING THE PRECEDING CALENDAR
38 YEAR. THE BOARD SHALL SUBMIT A COPY OF THE REPORT TO THE GOVERNOR, THE
39 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND
40 SHALL PROVIDE A COPY OF THIS REPORT TO THE SECRETARY OF STATE, THE DIRECTOR
41 OF THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS AND ANY OTHER
42 PERSON WHO REQUESTS A COPY. THE REPORT SHALL INCLUDE INFORMATION, BY
43 UNIVERSITY, RELATING TO:

- 44 1. THE BUSINESS ENTERPRISES IN WHICH THE BOARD RECEIVES AN OWNERSHIP
45 INTEREST.

1 2. TECHNOLOGY, INTELLECTUAL PROPERTY AND OTHER PRODUCTS TRANSFERRED
2 TO THE BUSINESS ENTERPRISES.

3 3. AGREEMENTS RELATING TO THE RESEARCH, DEVELOPMENT, PRODUCTION,
4 STORING OR MARKETING OF NEW PRODUCTS OR SERVICES DEVELOPED BASED ON
5 UNIVERSITY RESEARCH, TECHNOLOGY OR INTELLECTUAL PROPERTY.

6 4. REVENUES PRODUCED FROM ACTIVITIES UNDER THIS SECTION.

7 I. FOR THE PURPOSES OF THIS SECTION:

8 1. "SECURITIES" MEANS CORPORATE STOCK OR OTHER EQUITY SECURITIES,
9 DEBENTURES, WARRANTS, OPTIONS OR OTHER CONTRACTUAL RIGHTS THAT MAY BE
10 CONVERTED INTO OPTIONS, DEBT SECURITIES, LIMITED PARTNERSHIP INTERESTS,
11 MEMBERSHIP INTERESTS IN A LIMITED LIABILITY COMPANY, BENEFICIAL INTERESTS IN
12 TRUSTS, JOINT VENTURE INTERESTS AND ANY OTHER INTERESTS, HOWEVER DENOMINATED,
13 IN ANY FORM OF FIRM OR COMPANY IF HOLDING THE SECURITY DOES NOT CAUSE THIS
14 STATE OR THE BOARD TO BE PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE ISSUER
15 OF THE SECURITY.

16 2. "TECHNOLOGY DEVELOPMENT COMPANY" MEANS A NONPROFIT CORPORATION, A
17 FOUNDATION, A TRUST, A FUND, A FOR-PROFIT CORPORATION OR A LIMITED LIABILITY
18 COMPANY WHOSE SOLE AND DIRECT OR INDIRECT BENEFICIARY, STOCKHOLDER OR MEMBER,
19 AS APPLICABLE, IS THE BOARD OR ONE OR MORE OF THE STATE UNIVERISTIES.

20 Sec. 4. Conditional enactment

21 A. This act is not effective unless the Constitution of Arizona is
22 amended by vote of the people at the next general election to authorize the
23 Arizona board of regents and state universities to acquire, hold, pledge and
24 dispose of securities.

25 B. The enactment of any provision of this act, conditioned on the
26 results of an election, does not constitute a submission of those provisions
27 to the voters under the power of the referendum.

APPROVED BY THE GOVERNOR MAY 27, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 27, 2003.

Passed the House March 4, 2003,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Franklin L. Dlake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate May 13, 2003

by the following vote: 22 Ayes,

5 Nays, 3 Not Voting

John Blumenthal
President of the Senate

Channing Bickley
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2403

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 21,, 2003,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

Jake Flake
Speaker of the House

Norman L. Fyore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

21 day of May, 2003

at 4:00 o'clock P. M.

Sandra Ramirez
Secretary to the Governor

Approved this 27 day of

May, 2003,

at 8³⁰ o'clock A. M.

Jr. Nye
Governor of Arizona

H.B. 2403

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 27 day of May, 2003,

at 2:20 o'clock P. M.

James L. Brewster
Secretary of State